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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICKEY WILLIAMS, ) Case No. CV 12-07150 DDP (JEMx)  
)  
Plaintiff, ) **ORDER GRANTING DEFENDANTS' MOTION**  
) **TO DISMISS**  
v. ) [Docket number 21]  
KAMALA D. HARRIS, Attorney )  
General; E. VALENZUELA, )  
Warden; MATTHEW CATE, )  
Secretary of CDCR; GEORGE )  
GIURBINO, Director of CDCR; )  
JERRY BROWN, State Governor, )  
Defendants. )  
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)

Presently before the court is Defendants Kamala D. Harris, Matthew Cate, George Giubino, Elvin Valenzuela, and Jerry Brown (collectively, "Defendants")'s Motion to Dismiss under Rules 12(b)(6) and 8(a)(2). The case is suitable for adjudication without oral argument. Having considered the parties' submissions, the court now adopts the following order.

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1     **I.     Background**

2         Plaintiff Ricky Williams is an inmate of the California  
3     Department of Corrections and Rehabilitation ("CDCR"), presently  
4     incarcerated at the California Men's Colony ("CMC") in San Luis  
5     Obispo, California. Appearing *pro se*, on September 7, 2012,  
6     Plaintiff brought the instant Complaint alleging that Defendants  
7     violated his rights under the Americans with Disabilities Act and  
8     the Rehabilitation Act of 1973 (collectively, the "ADA"). The  
9     gravamen of Plaintiff's claim is that the California Board of  
10    Parole Hearings ("BPH" or "Board")'s December 22, 2011 decision to  
11    deny him parole, which was based in part on his mental health,  
12    violated Title II of the ADA. Plaintiff requests that the court set  
13    aside his parole denial, grant him a new parole hearing, and render  
14    invalid the procedures used to deny him parole.

15         On October 21, 1991, after having pled guilty to the charge of  
16    second degree murder (Cal. Penal Code § 187), Plaintiff was  
17    sentenced to state prison for a term of fifteen years to life.

18         On December 22, 2011, Petitioner appeared before the Board for  
19    his fifth parol consideration hearing. The Board concluded that  
20    Plaintiff is not suitable for parole because he poses an  
21    unreasonable risk of danger if released from prison. (See Complaint  
22    Ex. J at 160-169, Transcript of BPH Proceedings.) The Board based  
23    this conclusion on what it described as Plaintiff's record of  
24    serious misconduct while incarcerated, including several instances  
25    of misconduct since the prior parole hearing; his failure to take  
26    responsibility for such conduct; his past and present mental  
27    health, including a psychological report, dated July 28, 2011,  
28    diagnosing him with delusional disorder (persecutory type); and his

1 failure to take full advantage of self-help programming  
2 opportunities available to him in CDCR. (Id.)

3 Plaintiff has previously filed two unsuccessful habeas corpus  
4 petitions challenging the December 22, 2011 denial of his parole  
5 application. Plaintiff filed a state law habeas corpus petition, In  
6 re Rickey Williams, Case No. BH08655, which was denied by the  
7 California Supreme Court on December 19, 2012. (See Defendants'  
8 Request for Judicial Notice ("RJN"), Exs. 2-4.) Plaintiff also  
9 filed a federal habeas corpus petition, Ricky Williams v. Terri  
10 Gonzalez, Case No. CV 13-0143, which was denied by this court on  
11 April 3, 2013. (See RJN Ex. 5.)

12

13 **II. Legal Standard**

14 A complaint will survive a motion to dismiss when it contains  
15 "sufficient factual matter, accepted as true, to state a claim to  
16 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
17 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
18 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
19 "accept as true all allegations of material fact and must construe  
20 those facts in the light most favorable to the plaintiff." Resnick  
21 v. Hayes, 213 F.3d 443, 447 (9th Cir.2000). Although a complaint  
22 need not include "detailed factual allegations," it must offer  
23 "more than an unadorned, the-defendant-unlawfully-harmed-me  
24 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
25 allegations that are no more than a statement of a legal conclusion  
26 "are not entitled to the assumption of truth." Id. at 679. In other  
27 words, a pleading that merely offers "labels and conclusions," a  
28 "formulaic recitation of the elements," or "naked assertions" will

1 not be sufficient to state a claim upon which relief can be  
2 granted. Id. at 678 (citations and internal quotation marks  
3 omitted).

4 "When there are well-pleaded factual allegations, a court  
5 should assume their veracity and then determine whether they  
6 plausibly give rise to an entitlement of relief." Id. at 679.  
7 Plaintiffs must allege "plausible grounds to infer" that their  
8 claims rise "above the speculative level." Twombly, 550 U.S. at  
9 555. "Determining whether a complaint states a plausible claim for  
10 relief" is a "context-specific task that requires the reviewing  
11 court to draw on its judicial experience and common sense." Iqbal,  
12 556 U.S. at 679.

13

14 **III. Discussion**

15 Defendants argue that the Complaint should be dismissed on the  
16 grounds that: (1) the Complaint should be construed as a habeas  
17 corpus petition and dismissed for failure to exhaust state remedies  
18 prior to filing; (2) Plaintiff filed a separate and concurrent  
19 federal writ of habeas corpus, which has already been denied by  
20 this court, precluding litigation of the same issues in the instant  
21 action; (3) Plaintiff fails to allege facts showing actionable  
22 discrimination under the ADA; and (4) Plaintiff's Complaint lacks  
23 adequate specific factual allegations as to the role played by each  
24 Defendant in causing the harm alleged. The court considers each  
25 argument in turn.

26 As to Defendants' first argument, the court is unpersuaded by  
27 Defendants' contention that the Complaint should be construed as a  
28 habeas corpus petition and that dismissal is warranted for failure

1 to exhaust state remedies. "[W]hen a state prisoner is challenging  
2 the very fact or duration of his physical imprisonment, and the  
3 relief he seeks is a determination that he is entitled to immediate  
4 release or a speedier release from that imprisonment, his sole  
5 federal remedy is a writ of habeas corpus." Preiser v. Rodriguez,  
6 411 U.S. 475, 500 (1973). However, "[n]ot all challenges to a  
7 parole board's policy implicate the invalidity of continued  
8 confinement." Bogovich v. Sandoval, 189 F.3d 999, 1004 (9th Cir.  
9 1999). A challenge to a parole board's policy need not be brought  
10 as a habeas corpus petition where it "does not necessarily imply  
11 the invalidity of their continuing confinement." Id. at 1004.

12 In Bogovich, the Ninth Circuit held that a challenge brought  
13 by state prisoners to a policy under which they were allegedly  
14 denied parole primarily because of their substance abuse  
15 disabilities could be brought as a claim under Title II of the ADA,  
16 rather than as a habeas corpus petition. Bogovich, 189 F.3d 999,  
17 1001, 1005. The Court held that the ADA claim could go forward  
18 because the prisoners would not "necessarily be entitled to parole  
19 or to shorter prison terms if they were successful on the merits of  
20 their ADA claim." Id. at 1003. Rather, the Court held, the  
21 prisoners contended only that "in the future, the Board should not  
22 be allowed to discriminate against disabled inmates in its parole  
23 decision-making process." Id. at 1003-04.

24 As in Bogovich, Plaintiff does not seek reversal of the  
25 Board's decision to deny him parole, but rather a new parole  
26 hearing conducted under a standard compatible with Title II. (Id.  
27 at 48.) Because the relief sought by Plaintiff, if granted, would  
28 "not necessarily imply the invalidity of [his] continuing

1 confinement," Bogovich, 189 F.3d at 1004, the court will not  
2 construe the complaint as a habeas petition. Accordingly, the  
3 requirements for the exhaustion of available state remedies--which  
4 the government contends Plaintiff failed to satisfy--do not apply.  
5 See Rose v. Lundy, 455 U.S. 509, 515 (1982) (explaining requirement  
6 of exhaustion of state remedies for federal habeas petitions).  
7 Thus, the court will not dismiss the complaint under the  
8 government's failure-to-exhaust theory.

9 The court next considers Defendants' argument that the court  
10 should decline to consider the Complaint because Plaintiff has  
11 filed a separate habeas corpus petition before this court. "A court  
12 may choose not to exercise its jurisdiction when another court  
13 having jurisdiction over the same matter has entertained it and can  
14 achieve the same result." Crawford v. Bell, 599 F.2d 890, 893 (9th  
15 Cir. 1979). As Defendants note, Plaintiff previously filed, on  
16 January 9, 2013, a federal habeas corpus petition styled Rickey  
17 Williams v. Terri Gonzalez, which the court denied on April 3,  
18 2013. (Case No. 13-0143, DKT No. 12.) The Ninth Circuit denied  
19 Williams a certificate of appealability on January 1, 2014. (Id.  
20 DKT No. 16.)

21 As in the current Complaint, in that Petition, Plaintiff  
22 contended, among other arguments, that the BPH Commissioner's  
23 reliance on Plaintiff's mental health in denying him parole was  
24 unlawfully discriminatory. (See Petition at 61-66.) The government  
25 argues that the court should dismiss the complaint on the ground  
26 that it is duplicative relative to the Williams v. Gonzalez. (See  
27 Mot. at 9-10.)

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1       The court will not dismiss the ADA claim on this basis.<sup>1</sup> The  
 2 court dismissed Plaintiff's habeas corpus Petition without  
 3 considering whether the parole board engaged in unlawful  
 4 discrimination under federal anti-discrimination statutes. (See  
 5 RFJN Ex. 4.) As explained in that case, the scope of federal habeas  
 6 review in the context of a parole decision is limited to the  
 7 constitutional question of whether fair and adequate procedures  
 8 were employed for protection of the prisoner's state-created  
 9 liberty interest. See Swarthout v. Cooke, 131 S. Ct. 859, 863  
 10 (2011) ("Because the only federal right at issue is procedural, the  
 11 relevant inquiry is what process [the petitioner] received, not  
 12 whether the state court decided the case correctly.") The court  
 13 found that, during the December 22, 2011 proceeding, Plaintiff was  
 14 represented by counsel, testified at length, presented beneficial  
 15 evidence, and received a written statement of the reason for the  
 16 Board's decision. (See RJN Ex. 4.) On this basis, the court found  
 17 that fair and adequate procedures were provided and it denied the  
 18 Petition. (Id.) As the primary issues raised in the current  
 19 Complaint, involving the right to be free of discrimination under  
 20 the ADA, were not the subject of an earlier adjudication, the Court  
 21 does not find a sufficient interest in the conservation of judicial  
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23       <sup>1</sup> Plaintiff also asserts at points that there were  
 24 deficiencies with respect to the quality of his representation,  
 25 bias on the part of the Board leading up and at the December 22,  
 26 2011 hearing, and a failure of the Board to articulate a nexus  
 27 between its stated reasons for denial of parole and a current  
 28 unreasonable risk to public safety. (See, e.g., Compl. at 16-18,  
 32-34, 38.) With respect to those assertions, the court agrees with  
 Defendants that these claims are properly brought in the form of a  
 habeas corpus petition and the court chooses not to exercise  
 jurisdiction over these claims, having already denied a habeas  
 petition addressing these issues. See Ricky Williams v. Terri  
Gonzalez, Case No. CV 13-0143-DDP (Apr. 3, 2013).

1 resources to merit dismissal of the case on the ground that it is  
2 duplicative.

3 Next, the court considers Defendants' argument that the  
4 complaint should be dismissed on the ground that Plaintiff has  
5 failed to allege conduct that violates the ADA. (See Mot. at 10.)  
6 On this score, the court agrees with Defendants and will dismiss  
7 the Complaint.

8 Title II of the ADA prohibits discrimination by a public  
9 entity on the basis of disability. 42 U.S.C. § 12132; Lovell v.  
10 Chandler, 303 F.3d 1039, 1052 (9th Cir. 2004). The statute applies  
11 to inmates in state prison. See Armstrong v. Wilson, 124 F.3d 1019,  
12 1023, 1025 (9th Cir. 1997). To state a claim of disability  
13 discrimination under Title II, a plaintiff must allege four  
14 elements: "(1) the plaintiff is an individual with a disability;  
15 (2) the plaintiff is otherwise qualified to participate in or  
16 receive the benefit of some public entity's services, programs, or  
17 activities; (3) the plaintiff was either excluded from  
18 participation in or denied the benefits of the public entity's  
19 services, programs, or activities, or was otherwise discriminated  
20 against by the public entity; and (4) such exclusion, denial of  
21 benefits, or discrimination was by reason of the plaintiff's  
22 disability." Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002).

23 The Ninth Circuit has held that a plaintiff may state a claim  
24 under Title II based on allegations that a parole board failed to  
25 perform an individualized assessment of the threat that the  
26 prisoner poses to the community by categorically excluding from  
27 consideration for parole all people with a disability. See  
28 Thompson, 295 F.3d at 894 n. 1. However, parole boards are not

1 barred from considering an inmate's disability as part of an  
2 individualized inquiry for parole suitability, where the disability  
3 is relevant to a determination of the person's propensity to commit  
4 crime or the board's legitimate penological interests. Id.

5 Here, Plaintiff alleges in his Complaint that he has "state[d]  
6 a claim under Title II that the parole board failed to perform an  
7 individualized assessment of the threat he pose [sic] to the  
8 community by categorically excluding from consideration for parole  
9 all people with mental illness history." (Compl. at 36.) Under  
10 Thompson, such a categorical exclusion could give rise to an ADA  
11 claim.

12 However, as Defendants point out, Plaintiff's Complaint  
13 contradicts his contention that he was excluded solely because of  
14 his mental health disability. (See Mot. at 12.) In considering a  
15 complaint, the court is not limited by the allegations contained in  
16 the body of the complaint when--as here--a complaint is accompanied  
17 by attached documents; the court may consider such documents in  
18 determining whether the plaintiff has stated a claim. See Durning  
19 v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).  
20 Plaintiff has attached to his Complaint a copy of the transcript of  
21 his December 22, 2011 hearing. (See Compl. Ex. J.) A review of this  
22 document discloses that the Board did not deny Plaintiff's petition  
23 for parole solely based on his mental health disability. (See id.  
24 at 160-169.) Rather, the Board reached its conclusion based upon an  
25 individualized inquiry regarding Plaintiff's suitability for  
26 parole, which considered, in addition to his mental health,  
27 Plaintiff's record of misconduct while incarcerated, his failure to  
28 take responsibility for such conduct, and his failure to take

1 advantage of self-help programming opportunities within CDCR. (See  
2 id. at 160-62, 164.) Moreover, the Board's consideration of  
3 Plaintiff's mental health was focused squarely on his propensity  
4 for violence should he be released. (Id. at 164.) In sum, the  
5 hearing record renders Plaintiff's ADA claim under Thompson  
6 implausible.

7 Finally, the court considers Defendants' contention that the  
8 Complaint should be dismissed under Rule 8(a)(2) because Plaintiff  
9 has failed to allege facts indicating with any particularity the  
10 role played by each Defendant in violating his constitutional or  
11 statutory rights. (See Mot. at 15.) The court agrees.

12 As Defendants note, the only allegation in the Complaint  
13 arguably connecting the alleged misconduct to the individual  
14 Defendants is Plaintiff's assertion that Defendants Valenzuela,  
15 Cate, Guirbino, and Governor Brown are "legally responsible for the  
16 operation of California Mens Colony-East." (Compl. at 11.)  
17 Defendant Harris appears nowhere in the Complaint. The Complaint  
18 includes no explanation of how any of the Defendants violated  
19 Plaintiff's rights under the Constitution or the ADA, whether  
20 through their conduct, enacted policies, or by any other means.  
21 See, e.g., Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).  
22 Arguably implicit in the Complaint is the contention that  
23 Defendants have used their authority to put in place an unspoken  
24 policy of categorically excluding inmates with mental health  
25 disabilities from parole. However, as discussed immediately above,  
26 Plaintiff has not plausibly alleged that any such policy exists.  
27 Plaintiff's failure to allege any connection between Defendants and  
28

1 any alleged harm he has suffered is a separate basis for dismissal  
2 of the Complaint.

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4 **III. Conclusion**

5 For the reasons set forth above, Defendants' Motion to Dismiss  
6 is GRANTED.

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8 IT IS SO ORDERED.

9  
10 Dated: February 26, 2014



DEAN D. PREGERSON

11  
12 United States District Judge

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